

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 585 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KODARLAL B. PATEL,

Versus

STATE OF GUJARAT,

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Appearance:

MR KM SHETH for MR GM AMIN for Petitioner

MR JM THAKORE ADV. GEN. & MR HL JANI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/12/96

ORAL JUDGEMENT

1. The petitioner by way of this Special Civil Application is challenging the validity of the orders passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.1149/81 dated 1-8-1983 confirming thereunder the order passed by the Deputy Collector and Krishi Panch in the matter of Agricultural Land Ceiling Act.

2. The petitioner holds the land to the tune of 24 acres 33 gunthas in village Navanagar and Dharisan of Dehgam Taluka of Ahmedabad District. The petitioner has filed a declaration of his holding in form no.2 prescribed under the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the Act, 1960). The Mamlatdar after holding an inquiry, under its order dated 9-2-1977, held that the petitioner does not hold any land in excess of the ceiling area. The Deputy Collector concerned took this decision of the Mamlatdar in suo motu revision under sec.37 of the Act, 1960 and remanded the matter back to the Mamlatdar under its order dated 23rd January, 1980. The Mamlatdar thereupon after holding further inquiry, as per the directions given by the Deputy Collector under its order dated 23rd March, 1981, held that the petitioner is in possession of 3 acres and 28 gunthas of land in excess of the ceiling area and further ordered that the excess land vests in the State under sec.21 of the Act, 1960. Being aggrieved of the aforesaid order of the Mamlatdar, the petitioner has taken up the matter before the appellate authority. The appellate authority dismissed the appeal under the order dated 27th June, 1981. The petitioner has then taken up the matter in revision to the Gujarat Revenue Tribunal which has also been dismissed under the order impugned in this Special Civil Application. Hence this Special Civil Application.

3. The reply to the Special Civil Application has been filed by the respondent-State and during the course of arguments a document has also been filed i.e. village specimen no.7-12.

4. The learned counsel for the petitioner, Shri K.M. Sheth made three fold contentions before this court. Firstly, it is contended that the Mamlatdar has not given an opportunity of hearing to the petitioner. The day on which the final hearing of the matter had taken place, the petitioner and his counsel were prevented from appearing before the said authority because of the reasons beyond their control. The next submission has been made that the land admeasuring about 9 acres and 31 gunthas of Survey No.8 was transferred to one Shivabhai by a Banakhat dated 6-5-1970 and the possession thereof has also been handed over to him, and as such, this land should not have been taken to be the land of the petitioner for the purpose of determining the ceiling limit under the Act, 1960. Lastly, the counsel for the petitioner contended that the land comprised in survey no.1/4, block no.144 Moje Navanagar, Tal. Dehgam has wrongly been clubbed with the land in possession of the

petitioner. The contention of the petitioner is that the land of this aforesaid survey number has been converted into nonagricultural purpose way back in the year 1965 and as such, the same could not have been considered to be an agricultural land forming the part of holding of the petitioner.

5. On the other hand, the counsel for the respondent contended that the petitioner has raised the point before the appellate authority as well as the revisional authority that the Mamlatdar has not given him an opportunity of hearing and the two authorities below have not accepted that contention. The authority has held that there was no sufficient cause for the absence of the petitioner on the day on which the matter has been heard and decided by the Mamlatdar and as it being a finding of fact no interference is called for of this court sitting under Article 227 of the Constitution of India. In reply to the second contention of the counsel for the petitioner, the counsel for the respondent urged that no sale deed whatsoever has been executed by the petitioner in favour of Shiva, in absence of sale deed the transfer was not complete, and as such, the petitioner is not divested of his ownership of the said holding, and as such, it has rightly been clubbed and taken to be a part of his holding. Regarding the last contention of the counsel for the petitioner, the counsel for the respondent submitted that the part of the land of survey no.1/4, block no.144 has been converted in the year 1965 for nonagricultural purpose, but that land has still be continued to be used for agricultural purpose, and as such, it has rightly been taken to be an agricultural land for the purpose of determination of the ceiling limit of the holding of the petitioner. Carrying this contention further, the counsel for the respondent contended that it is a case where on the part of the land the petitioner may have a farm house, and as such, the land appurtenant thereof has to be taken into consideration for the purpose of determination of the ceiling area. Last contention has been made that in the Revenue record, village specimen no.7-12 till 1976-77 there was no entry of the nonagricultural use of the land. First time in the year 1976-77, the entry has been made as house 3,300 sq. yds. this land continues to be an agricultural land, the same has rightly been considered to be the part of the holding of the petitioner or it is a case of only of the farm house. The counsel for the respondent fairly conceded that survey no.1/4 and block no.144 are the same.

6. I have given my thoughtful consideration to the

submissions made by the learned counsel for the parties. From the record of the Mamlatdar and A.L.T. Ceiling, Ahmedabad, the extract thereof has been produced on the record of this Special Civil Application, on 6-3-1981 none was present for the petitioner. The matter was called out three times, but none has put appearance. There is nothing on the record that any request has been made by the petitioner for the adjournment of the case on 6-3-1981. The matter has been decided on 23rd March, 1981 i.e. much after the date 6-3-1981. The petitioner has not produced on record any material to show that after 6-3-1981, the petitioner or his counsel has made any attempt to know what has been done to the case on 6-3-1981 and which is the next date fixed in the matter. This conduct of the petitioner, not to take the care of his case after 6-3-1981 and before 23-3-1981 goes to show that the plea which has been raised for the absence on 6-3-1981 is nothing but only a manufactured plea. Even if it is assumed and accepted that on 6-3-1981, the petitioner was prevented from attending the case for the reasons beyond his control and it may be taken to be a sufficient cause for the absence, but the fact that the petitioner has not made any attempt to do immediately thereafter about the case, goes to show that it is a case of negligence and whatever ground which has been given out for the absence on 6-3-1981 is a manufactured ground and it has no relevance whatsoever in the light of his subsequent conduct. The appellate authority as well as the revisional authority have not committed any error much less an illegality in holding that the petitioner was unable to make out any excuse for his absence on 6-3-1981. It is certainly a question of fact whether the petitioner was prevented for the cause beyond his control to appear before the court and on facts, both the authorities have not accepted the case of the petitioner, and I do not find any perversity in the orders of the both the authorities. The first contention of the counsel for the petitioner is devoid of any substance.

7. So far as the second contention of the counsel for the petitioner is concerned, there is no documentary evidence i.e. registered sale deed on record of the transfer of land of 9 acres and 31 gunthas of survey no.8 by the petitioner to Shiva way back on 6-5-1970. The plea that the petitioner entered into agreement for the sale of the said land in favour of Shiva by a Banakhat dated 6-5-1970 and possession is also handed over is hardly of any substance and relevance because such a plea can be taken as it helps the petitioner to get out of this land from the provision of the Agricultural Land Ceiling Act. The petitioner could have divested his

right, title, interest of the aforesaid land only in case, it would have been transferred by a registered sale deed, which is not the case here. In the absence of the registered sale deed, the authorities below have not committed any error or illegality in not accepting the case of the petitioner of the transfer of the land aforesaid.

8. The last contention of the counsel for the petitioner is also devoid of any substance. The counsel for the respondent has admitted that on 7-10-1965, an order has been made for the grant of the permission for nonagricultural use for some part of the land of survey no.1/4, block no.144, but the entry regarding that was not made in the village specimen no.7/12. The petitioner has not produced on record any material whatsoever to show and establish that for all the years till 1976-77, the aforesaid land was not used for agricultural purposes. The petitioner has not produced any material on record of this case that earlier to 1976-77 he has raised any construction on the land. From the document, village specimen 7/12, it is clear that in revenue record for the first time the entry reflected regarding the aforesaid nonagricultural use of the land by the petitioner. The entry has been made (use Pattdar) and area has been given 3303 sq. yds. It is a case where after many years of the grant of N.A. permission the petitioner has raised the construction of the farm house.

9. Clause 17 of subsection 1 of sec.2 of the Act, 1960 defines the land which means that in relation to any period prior to the specific date, land which is used for or capable of being used for agricultural purpose and includes the sites of farm building appurtenant to such land and in relation to any other period, land which has been used or capable of being used for agricultural purpose and includes the sites of farm building appurtenant to such land, the land on which grass grows naturally etc..

10. It is not in dispute that the specified date is 1-4-1976. Prior to 1-4-1976, the land in dispute was not shown in village specimen 7/12 as the land used for building purpose. Earlier to 1-4-1976 on the basis of the aforesaid revenue record this land was a land not used for nonagricultural purposes. No other material has been produced by the petitioner on record to show that at any time earlier to 1-4-1976 this whole of the land has been put to nonagricultural use. So taking into consideration the definition of the land given in clause 17 of subsection-1 of sec.2 of the Act, 1960, it was a

land which is used or capable of being used for agricultural purpose and as such, it has rightly been taken to be a land for the purpose of determination of ceiling limit. Earlier to 1976-77 from the village specimen no.7/12, it is clear that the land in dispute was used by the petitioner for agricultural purposes. Otherwise also, even if it is taken to be a nonagricultural land, but it remains to be a site for farm building for all the years, and as such, it is to be clubbed and rightly been clubbed for the purpose of determination of the ceiling limit under the Act. 1960.

11. Taking into consideration the totality of the facts of this case, I do not find any illegality in the order passed by the authority below and it has rightly been declared that the petitioner is having 3 acres and 28 gunthas of land in excess of ceiling area.

12. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated. The petitioner is directed to pay Rs.2000/- by way of costs of this petition. The counsel for the respondent has no objection in case if the petitioner deposits this amount of costs in the account of Advocates' Welfare Fund. The petitioner is directed to deposit the amount of this costs in the office of Gujarat Bar Council under the head Advocates' Welfare Fund and the receipt of the deposit of amount should be produced on the record of this file. A copy of this order may be sent to the Secretary, Bar Council of Gujarat and it shall be open to the said authority to take an appropriate action in case the petitioner has not complied with the aforesaid order.

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